IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6320 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BC PATEL

Versus

STATE OF GUJARAT

Appearance:

MR DC RAVAL for Petitioner

MR PREMAL JOSHI for M/S PATEL ADVOCATES for Resp. No. 1

None present for Respondent No. 3, 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 31/08/2000

ORAL JUDGEMENT

#. Heard learned counsel for the parties.

#. I am satisfied that the order of the Gujarat Civil

Services Tribunal, Gandhinagar dated 21.7.88 in Appeal No.118 of 1988 deserves to be quashed and set aside.

#. The petitioner was superseded in promotion from the post of Junior Clerk to Senior Clerk on the ground that there were adverse remarks in his annual Confidential Report for the year 1985-86. Out of three adverse remarks, the Tribunal has taken two to be serious and sufficient for justifying his supersession. Remark No.1 has not been treated as adverse.

#. Before the Tribunal, the learned counsel who was appearing for the petitioner raised the contention that Shri N.M.Purohit, junior to the petitioner, who has been given promotion was also having adverse remarks in his annual Confidential Report for one year. This point though specifically raised before the Tribunal, while deciding the matter, the Tribunal has not referred the same. The criteria for promotion, as per the order of Tribunal was proved merit-and-efficiency. If in case where junior, who is also having adverse remarks, is given promotion, then certainly this aspect needs to be considered by the Tribunal, though it may agree or may not agree with this contention is a different matter.

#. During the course of arguments the learned counsel for the petitioner contended that other junior viz. M.P.Parmar who was having adverse remarks for the year 1985-86 has also been promoted. This point was not raised before the Tribunal. However, in the Special Civil Application, this averment has been made in para No.13 and the same has not been controverted by respondents by filing reply to the same. It is open to the petitioner to raise this point before the Tribunal also. During the pendency of the Special Civil Application, the petitioner has been promoted to the post of Senior clerk and it is now only the question of giving him deemed date of promotion.

#. As a result, of aforesaid discussion, this petition succeeds and the same is allowed and the order of Tribunal dated 21.7.88 in Appeal No.118 of 1988 is quashed and set aside and the matter is remanded back to the Tribunal to decide the same afresh after considering these two aspects of the matter within a period of three months from the date of the receipt of the writ of this order. Rule is made absolute. No order as to costs.

(S.K.Keshote, J)

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